

(2019) 02 GUJ CK 0112
In the Gujarat High Court

Case No : R/Special Civil Application No. 432 Of 2015, 4795, 4796, 4797, 4798, 4799, 4800, 4801, 4802, 4803, 4804, 4805, 4806, 4807, 4808, 4809, 4810, 4811, 4812, 4813, 4814, 4815, 4816, 4817, 4818, 4819, 4820, 4821, 4822, 4823, 4824, 4825, 4826, 4827, 10616, 10635

Patel Sunilkumar Punjabhai & 6 other(s) APPELLANT
Vs
State Of Gujarat & 4 Other(s) RESPONDENT

Date of Decision : 27-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 114, 465, 466, 468, 471

Citation : (2019) 02 GUJ CK 0112

Hon'ble Judges : A.J. Shastri, J

Bench : Single Bench

Advocate : Maulin Raval, Ps Patel, Sangeeta Vishen, R.D.Kinariwala, Shalin Mehta, Mr Yjpatel, Gm Joshi, Rd Kinariwala, Vaibhav N Sheth

Final Decision : Disposed Off

Judgement

1. The present group of petitions are filed by the respective petitioners under Article 226 of the Constitution of India, essentially challenging the action of respondent authority in respect of their employment for seeking following reliefs :

"A. admit this petition.

B. quash and set aside the instructions issued by the respondent No.2 and 4 for stoppage of salary of the petitioners;

C. issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order to direct the respondent no.2 to pay the salary and other benefits to the petitioners for which they are entitled;

D. pending admission, hearing and final disposal of the petition, direct the respondent no.2 to pay the salary of the petitioners from the date of stoppage;

E. granting such and further reliefs and passing such other and further orders as

the circumstances of the case may requires;

F. award the cost of this petition;

G. Your Lordships may be pleased to quash and set aside the order dated 22.3.2016 passed by the DEO, Aravalli with the observation/decision of the committee dated 21.3.2016.

2. These petitions are arising out of common question of facts and law, as a result of which learned advocates appearing on behalf of the petitioners have requested the Court to deal with and decide the same by way of common judgment. Accordingly, by treating SCA No.432 of 2015 as a lead matter, this set of petitions is dealt with and disposed of by present common judgment.

3. The facts emanating SCA No.432 of 2015 are that respondent No.3 Mandal is running a private school along with the Government school, for which Secondary and Higher Secondary Education Board has given the permission. The private schools are stated to have received the grant-in-aid benefit upon resolution being passed by the Board. The private schools which are entitled to grant will have to submit an application before the Commissioner of Schools and after getting the permission, the teachers, who are appointed by the respective private schools, would be paid the salary from such grant. The orders regarding salary of teaching and non- teaching staff is being released by DEO, which, in turn, had received the order from the Commissioner of Schools and the salary would be paid by Accounts Officer of a particular district after due verification.

3.1 It is the case of the petitioners that originally respondent No.3 - Mandal applied for registration of school which was granted on 13.9.1984 to open up standard 8th, 9th and 10th, for which permission was issued in the year 1984, 1989 and 1998 respectively. But on account of inadequacy of strength of students, in the year 2007 standard 8th and 10th could not meet with the requirement, as a result of which the registration of school was cancelled on 25.1.2008 and the staff was accommodated and absorbed in other institutions. The respondent No.3 Mandal had preferred an appeal which was rejected by the Gujarat Secondary Education Board. Later on, as per the case of the petitioners, the respondent No.3 - Mandal had applied for revival of registration of the school, which, after examining the relevant record and the particulars, permission was restored to restart the institute vide order dated 10.5.2012. Since the school came to be revived, the respondent No.3 had issued an advertisement on 20.5.2012 and 9.6.2013 for one post of Head Master, 4 posts of Sikshan Sahayak and one Administration Sahayak (Clerk) and one peon named as Sathi Sahayak. It is the case of the petitioners that all these petitioners were on the list of employment exchange, accordingly the employment exchange sent their names since the petitioners were having the requisite qualification for the relevant post. Later on, the respondent No.3 - Mandal had interviewed the petitioners, who came to be selected and appointed to their respective posts. On 12.6.2013, the respondent No.3 applied before the

office of DEO for seeking regularization of staff which are selected by it, as stated above and after consideration the said application, the respondent No.4 obtained the permission from respondent No.2 and thereafter, an approval of their respective appointments was accorded by way of order dated 26.12.2013. It is further the case of the petitioners that on 27.12.2013, the respondent No.3 made an application before the DEO for allotment of employment number of these petitioners and so much so that vide letter dated 31.12.2013, the respondent No.3 allotted the new employee number also to all the respective petitioners. After completing all necessary formalities, according to the petitioners, the respondent No.3 issued the regular appointment orders to all the petitioners and the petitioners accordingly started functioning to their respective posts in the school and also drawing the salary as per the orders and Rules of the Government.

3.2 Later on, according to the petitioners, one local person instituted a complaint on 10.9.2013 to the Education Minister, alleging that no procedure was followed and the forged orders were issued in respect of the employment of all the petitioners and after some preliminary inquiry, it was found that orders dated 1.7.2013 and 1.11.2013 were forged one. The petitioners of this petition indicate that they were not concerned with these orders, as referred to above. But then to the shock of the petitioners, an FIR was lodged against them on 16.11.2014 with the Modasa Rural Police Station for the offences punishable under Sections 465, 466, 468, 471 and 114 of the IPC being I-CR No.97 of 2014 filed by the office of Commissioner of Schools - Shri Rahimtulla Habibbhai Junukia. Pursuant to this FIR, according to the petitioners, without conducting any inquiry, without granting any opportunity to the petitioners, abruptly on the basis of the FIR, the salary and other benefits came to be stopped by respondent No.2 and in complete disregard to the principles of natural justice, due benefits pursuant to the petitioners' appointment came to be stopped. As a result of which, left with no other alternate, the petitioners have rushed down to this Court by invoking extraordinary jurisdiction of this Court.

3.3 The Court on 20.1.2015 was pleased to issue notice. But then on account of certain further information, the present petitioners sought amendment which came to be granted vide order dated 23.8.2016 and resultantly, the further action in the form of order dated 22.3.2016 passed by DEO, Arvalli with observations / decision of the committee dated 21.3.2016 which came to be challenged as an impugned order. In the meantime, the bank accounts were also freezed and for that civi applications have been submitted and time to time the relevant orders have been passed. But the essential challenge is to the order of DEO dated 22.3.2016 which is based upon the decision with observation / decision of the committee dated 21.3.2016. With this background of present facts, the petitions have come up for final consideration before this Court.

3.4 Since the main challenge is based upon the committee's decision and based upon which the consequential order came to be passed which fact is almost

similar in this group of petitions and as such, without enlisting the individual facts relating to all these petitions which are requested to be heard with this petition, are not incorporated. Accordingly, this decision on the lead matter will govern the fate of other sets of petitions.

4. Mr.Maulin R. Raval, learned advocate appearing with Mr.P.S.Patel, learned advocate and other learned advocates on behalf of the petitioners, has vehemently contended that for no fault on the part of petitioners - teachers, the action is initiated as if the fraud is committed by the petitioners. From the entire record, there is no evidence about direct involvement of the petitioners. Resultantly, this being a case of no evidence, the action cannot be initiated against the petitioners. It has further been contended that so long as the fraud is not established by the competent authority, the authority cannot infer at this stage of the proceedings that fraud has actually executed and as such, the action under challenge can be initiated as a consequence thereof. Mr.Raval, learned advocate, has further contended that very constitution of the committee was not in accordance with law and is not a legislative act. As a result of this, the consequential process and the report of the committee is of no consequence and since the action based upon, the same is without the authority of law. It has further been contended that a bare perusal of the show cause notice and the analysis of the committee report, it would transpire that report has travelled beyond the scope of the show cause notice and as such, it is nothing but a clear defiance of principles of natural justice, since the petitioners have not been given an opportunity to meet with the said circumstance. It has further been contended that important documents several in numbers have not been supplied to the petitioners which has adversely affected their right of making effective representation. The main reliance which has been placed of a letter dated 12.1.2016, a reference whereof which is made in Para.6 of the report, the same has created a serious prejudice to the petitioners since the neither the said report is submitted to the petitioners nor the resolutions which have been relied upon, have been provided.

4.1 Mr.Raval, learned advocate, has raised yet another contention specifically in SCA No.4795 of 2016, wherein at page-74, an attention is drawn to the members of the committee and has contended that the members were facing an allegation in this very episode, at least they should not be a part of a committee and, therefore, by referring to the designation of two District Education Officers, who were part of the committee, a contention is raised that entire committee is constituted invalidly and an attempt is made to safeguard the officers rather than petitioners' interest. The entire inquiry which has taken place by the committee is nothing but an eyewash and by inferring fraud on the basis of conjectures and surmises, the petitioners are made the scapegoat of entire scandal. It has further been pointed out that this episode could not have occurred without the aid and assistance of officers and on the contrary, instead of taking step against the offices, by placing them for some time under suspension, they have been not only reinstated but, even promoted as well. This itself is indicating the attempt of

committee to embarrass the petitioners only rather than the real culprits. Mr.Raval, learned advocate, has further submitted that the scope of the committee to inquiry is well stipulated in clause (1.2) on the preface itself, whereas the order if to be looked into it has travelled beyond the scope of its inquiry and as such, based upon such report, no action can be initiated. It has further been contended that entire situation has cropped up on account of one letter dated 10.9.2014 issued by Shri Chirag Patel but, that letter has not been given to the petitioners during the course of inquiry. It has further been submitted that pick and choose policy had been adopted unreasonably against the petitioners only, whereas in some of the schools, no such action is initiated and though there are no specific allegations of fraud against the petitioners, the action is taken as if the petitioners are culprits and placed in the precarious position. This action is nothing but a clear example of arbitrary and unreasonable exercise of power. It has further been pointed out by referring to page-134 of petition compilation from SCA No.432 of 2015 that essentially the charges and allegations are levelled against the officers and when the entire investigation is handed over to the police authority, the committee could not have inferred and concluded that fraud is committed in respect of appointment of petitioners and further, the overall circumstances if to be looked into as per the say of learned advocate that there is a lapse of procedure at the best on the part of authority in carrying out the recruitment process. But that lapse even if deliberate cannot be attributed to the petitioners. Resultantly, no action can be taken against the petitioners. Mr.Raval, learned advocate, has further contended that the appointment of committee appears to be by virtue of Section 18 of the Gujarat Secondary Education Act but, a bare look at the said statutory provision, this kind of committee is outside the purview of Section 18 of the Gujarat Secondary Education Act and since the appointment of committee is not in accordance with the statutory requirement, every consequential step to be declared as without the authority of law and undisputedly, the Act is applicable to the institute as well as to the office of respondent authority as well and, therefore, every action must be in accordance with the statutory requirement. It has been further submitted that even till date, the present petitioners are working but, since 2015 almost about 3 years, they are not being paid the salary either by the management or by the Government. Hence, here is a case in which the petitioners, though are serving, are deprived of their legitimate right of salary against the work which they are undertaking. These institutes are recognized by the State authority and, therefore, it is the obligation of State authority first to pay the salary and then, to reimburse from the respective school management in which the petitioners working. Essentially, it is the duty of the State authority to impart education as per the directive principles of State policy but, since basically it is not being possible for the State to cater this need, these managements are being recognized to establish the institute and allow to function which otherwise to be undertaken by the State. It has further been contended that even if any action is void and the orders are passed based upon it then, by a competent forum the said orders are first required to be declared as void and then only, the action can

be taken. Here is a case in which on account of serious allegation of fraud, the teachers are first being penalized and, therefore, each teacher must be given a opportunity of hearing, must be dealt with departmentally individually and only thereafter, a decision can be taken. Here, this entire process is by-passed by the authority which in no circumstance possible to be digested.

4.2 While contending this, a reference is made to two decisions which are delivered by the Apex Court reported in (2005) 10 SCC 465 and (2014) 5 SCC 782 and by referring to relevant paragraphs, it has been submitted that this action is not open to be initiated against the petitioners. It is not in dispute that teachers are not qualified. It is also not in dispute that teachers are not serving pursuant to their employment and there is no infirmity in discharge of their service and in view of this, the entire exercise against the petitioners is impermissible. Alternatively, Mr.Raval, learned advocate, has submitted that even if the action is to be finalized on account of this fraud being committed and the petitioners are beneficiary of fraud then also, in view of the decision which has been delivered by the Apex Court, more particularly Para.27 as and when fresh selection is to take place, age relaxation must be given to the concerned employees, since by efflux of time, majority of the petitioners might have become overage. But this submission is made as an alternate submission. Mr.Raval, learned advocate, has further reiterated that for want of providing adequate material, a serious prejudice is caused and there is no evidence worth the name to suggest that petitioners are party to the fraud. Apart from that, learned advocate has further drawn the attention of this Court to an order dated 7.9.2015 passed in one of the matters being SCA No.9516 of 2015 and submitted that this order has not been disturbed so far and even LPA is also withdrawn. Resultantly, the salaries are required to be paid to the teachers. Accordingly to learned advocate, said obligation is a prime responsibility of the State and then, to recover the same from the school management. Even yet another decision which has been delivered by the coordinate bench on 25.7.2017 in CA No.3458 of 2016 is also relied upon in which also the direction with respect to the payment has not been disturbed in LPA. As a result of this, in no case the petitioners are to be deprived of their legitimate right of getting salary at least, as majority of them are still working. On the contrary, there is a clear defiance of the order passed by the coordinate bench which is not disturbed in LPA and simply because a civil application is filed after disposal of the LPA, the same would not be used as a lever to continue to defy the direction given by the Court. Hence, the action is not only unjust and arbitrary but, tilted with malafides and the relief prayed for deserves to be granted, in the interest of justice. Mr.Raval, learned advocate, has submitted that with respect to the salary issue, both are jointly and severally to be held responsible i.e. State authority as well as the management and the petitioners may not be allowed to remain in uncertain state of affairs. No other submissions have been made.

5. In other petitions tagged with this group of petitions i.e. SCA No.10616/2016 and 10635/2016, Mr.G.M.Joshi, learned advocate appearing on behalf of

respective petitioners, has submitted that so far as the constitution of committee is concerned, he has nothing much to offer but, would like to adopt all the submissions on this issue which Mr.M.R.Raval, learned advocate, has canvassed. With respect to other issues, learned advocate has submitted that the inquiry was a premeditated step, as can be seen from the very first paragraph of it and as such, by inferring the fraud with a close mind, the entire report has been prepared by the committee. A bare perusal of the inquiry report would clearly indicate that the inquiry is based on mere assumption and presumption of fraud and there is no specific finding that fraud is established and committed. The allegations which are levelled which are preceding the process for which no inquiry has, in actual terms, taken place and to substantiate that, relevant paragraphs contained in the petition are also brought to the notice of the Court. A further grievance is also made that basically, all allegations are against the officers concerned, who are not only reinstated back but, even promoted to the higher post, as if the premium is given by thrusting upon the responsibility on management and the teachers. In fact, these institutes are grant-in-aid institutes covered under the direct payment scheme and as such, responsibility of making appointment, should be taken care of by the State authority.

5.1 Mr.G.M.Joshi, learned advocate, has submitted that the finding recorded on page-38 of the committee's report are if to be perused, travelled beyond the scope of even the show cause notice and as such, the entire exercise is nothing but mere eyewash just to save the skin of some of the officers. It has been contended further that though the documents were demanded, the same have not been furnished and the conclusion is arrived at without assigning any valid reason. From Para.6 onwards, the observations which are reflecting are having no basis at all and one surprising feature, as stated, is that so long as the trial with respect to this very incident in question is pending before the competent court, how the committee jumped to a conclusion about the fraud being practiced. Yet the competent court is to adjudicate and the criminal trial is yet not over, merely charge-sheets have been submitted and as such, the conclusion arrived at that fictitious documents have been created is a circumstance just to divert the responsibility. In fact, the documents have been ceased by the police then, on which perusal the committee has come to the conclusion about the fraud. Learned advocate has further drawn the attention that the committee consisting of five persons, out of which even 3 officers were party to the fraud and still forming part of the committee. By referring to District Education Officers of District Arvalli and Sabarkantha, such submission is made by learned advocate. Accordingly, Mr.Joshi, learned advocate, has submitted that this entire exercise gets vitiated and could not have been relied upon. To substantiate the submission made by learned advocate, a reference is made to a decision delivered by the Apex Court reported in (1978) 1 SCC 405 and the observations contained in Para.8 are pressed into service and submitted that this report and the ultimate order which has been passed is not only unjust and arbitrary but, a premeditated exercise of so called powers and on the basis of which the services

could not have been put to an end nor the management to be held responsible. It is the act of the officers which has substantially led to this controversy and as such, they may not be allowed to be judged in their own cause. This be the situation, Mr.Joshi, learned advocate, has vehemently submitted that the order in question and the report is absolutely not tenable in the eye of law. Hence, the relief prayed for in the respective petitions deserves to be granted. No other submissions have been made.

6. To meet with the stand taken by learned advocate for the petitioners, Ms.Sangita Vishen, learned AGP representing the respondent authorities, has submitted a common submission to counter the stand of the petitioners. It has been submitted at the outset that entire recruitment is governed by the policy and the statutory rules by-now and these policies and the statutory rules having been observed while recruiting the present petitioners and, therefore, irrespective of misdeeds, even if the same is to be sidelined for the time being then also, these appointments are not in consonance with the circular dated 9.2.2003 and the statutory rules which are framed of 2011 and as such, this being absolutely illegal and irregular appointments, cannot generate any substantive right remotely in favour of the petitioners and to substantiate this, some of the clauses contained in the circulars and the statutory rules have been brought to the notice and has submitted that it is settled position of law that illegal appointments cannot be regularized in any circumstance. Here is a case in which absolutely not only the procedure is not observed but, everything is fake. By referring to the affidavit-in-reply which has been filed at page- 36 of petition compilation, it has been vehemently submitted that this chapter of recruitment has not even reached to the office of Commissioner of Higher Education but, it has been managed at the District Education Officer's level only and though the responsible DEOs were at the relevant point of time dealt with and were placed under suspension and as such, by taking advantage of alleged act of the officers, the petitioners cannot seek any relief as a matter of right. It has been submitted hat it is undisputed that these institutes are recognized institutes getting grant from the Government and, therefore, by virtue of various circulars and the policies, these institutes are bound to observe the recruitment process which has been prescribed by the Government Resolution referred to above and are rather under an obligation to observe the requirements of statutory rules. A reference is made to yet another circular dated 9.10.2003 reflecting on page-96 which has prescribed a specific mode of appointment. How and in what manner the NOC is to be obtained, in what manner the forms are to be invited pursuant to the advertisement and in what process, each candidate is to be admitted. Now, this entire procedure appears to have been by-passed by the school management. So much so the office of DEO was also misled and the DEO at the relevant point of time had blindly granted even approval and as such, apparently when a fraud is practiced upon the recruitment process, no right can be legitimately claimed out of such process. Prior to the year 2010, what was prevailing with respect to the recruitment has been posted before the Court by the learned AGP and then, has

submitted later on, by virtue of statutory rules, the powers are with the selection committee to be validly constituted as per the requirement of statutory rules and no discretion is left with the management and this notification has been published w.e.f. 11.2.2011 reflecting on page-118. Hence, since all these appointments are subsequent to this notification are to be governed undisputedly by virtue of this notification of February, 2011 and the record indicates that it is not in dispute that this entire process is not undergone which has made it clear that these appointments are not only illegal and irregular but invalid and contrary to the statutory rules. By referring to Rules 4, 9, 11 and 12, it has been submitted that these statutory rules which are framed are as self-contained code and cannot be deviated by management or the authority including that of the Government. As a result of this, since these appointments are de hors the statutory rules, the petitioners are not having any legal right to claim to be continued or even regularized and the entire report has been considered while taking final decision which has thoroughly examined the issues with respect to this process of recruitment. Learned AGP has further submitted that these institutions are given the grant from the Government and, therefore, in executive power of the Government, it is always open for the State to constitute a committee for this cropped up issue and the grant-in-aid is the step of State Government, it has got its own inbuilt power to constitute a committee. As a result of this, the committee which has been constituted is a valid committee and cannot be called in question by the petitioners, who are the beneficiary of a fraud.

6.1 Ms. Sangita Vishen, learned AGP, has submitted that in any case, the petitioners cannot agitate this issue about constitution of committee since the petitioners have not objected to same, even participated in the process which has been undergone by the committee which has given ample opportunity to explain the circumstances and as such, when there is no resistance and they have participated in the process of inquiry, this constitution of committee cannot be called in question at the instance of the petitioners.

6.2 It has further been submitted that about the officers, who have been a party to the process of adjudication and inquiry by the committee, the said issue is also not open to challenge since the responsible officer Mr. Chaudhary, DEO and another officer Ms. Solanki were already transferred at the relevant point of time and the officers who are party to this committee are different from those officers, against whom some clout was generated and as such, the committee is consisting of proper and independent person and hence, the committee is validly constituted committee. So far as the office of commissionerate is concerned, it has been submitted that this entire episode / chapter has not reached to the level of commissioner and as such, there cannot be any objection if the commissioner being the higher authority can look into this mass irregularity. It has been submitted that entire exercise is undertake well within the scope of its authority, through a validly constituted committee and by independent persons, who have nothing to do with the alleged irregularities nor were party to the same even remotely and as such, after granting adequate opportunity to the

petitioners as well as the management, this entire process has been undertaken validly and since the order under challenge is well supported by a cogent reason, the same is not suffering from any illegality. Hence, this being a case in which no equitable jurisdiction of this Court be allowed to be invoked by the petitioners. It is submitted that a serious nepotism has taken place in this entire process of recruitment and to illustrate this, learned AGP has drawn the attention to the relevant paragraphs of affidavit-in-reply which have clearly suggested that not only any qualifications are verified, no reservation criteria is kept in mind, no NOC was obtained and the entire process is undertaken in absolutely contrary to the policy and the applicable rules. Since the authority has considered all relevant aspects and prima facie, found serious irregularity, without observing much into details since the criminal prosecution is pending against all these petitioners as well as the President of the respective school management but, taking note of serious irregularities and hand-in-glove of the petitioners and the management personnel, a decision is taken not to allow irregularity to be perpetuated. If this is allowed to be perpetuated and continued, there will be serious loss to the public exchequer for no fault on the part of authority and so far as the responsible officers are concerned, it has been reiterated that strict action has been taken. It has been further submitted that there is a specific conclusion about illegality and irregularity which has been analyzed by the authority and as such, since the conclusion is based upon material and the same is arrived at after hearing and supported by cogent reasons, the same cannot be substituted in exercise of extraordinary equitable jurisdiction. On the contrary, it has been submitted that there are circulars to the effect that irregular appointments can be never regularized and such circulars are circulars dated 1.7.2002 and 16.4.2005. The criminal case which is pending in which the charge-sheets have been filed and all these petitioners and the respective Presidents of the relevant institutions are arraigned as accused persons. Hence, the decision which has been arrived at cannot be said to be unjust or arbitrary in any manner. Learned AGP has further submitted that it is few mandals, who have not accepted the responsibility. On the contrary, one Choriwad Education Mandal has followed the procedure, accepted this and terminated the services, whereas rest of the Mandals have adopted the speculative approach and have still allowed the teachers on their own to continue to be on job without any payment and as such, instead of clarifying the ground reality, still these respective education Mandals are misguiding the teachers and continue to litigate further. By referring to the contents of further affidavit reflecting from page-82 onwards, what are the irregularities have been clearly pointed out in the relevant paragraphs on page-86 and by referring to this further affidavit, an attention is drawn that petitioner No.1 has applied to the post of Principal on 9.6.2013 and was not even serving still he participated as a Principal in the interview which is reflecting on page-127. Same is the case with one Manjulaben who is stated to be 40 years in the year 2015, having experience which she has mentioned, would unrealistically indicate that she must have started teaching at the age of 17 years. There are examples of many institutions have been pointed out in further affidavit filed by

the authority and has indicated that serious nepotism has taken place and for that very purpose, to pass on the benefit of grant-in-aid and direct payment scheme, near and dear ones have been considered and recruited by creating and concocting the documents. It has been clearly concluded by the committee which is validly constituted that school managements have not observed the recruitment process nor observed the procedure established by Government resolution referred to above nor observe the mandate of statutory rules and as such, it was well within the powers of respondent State to stop the grant. It has been categorically reiterated that these are the petitioners who have been illegally recruited, have no legal right to claim salary. If ultimately there is any claim tried to be generated by these petitioners - teachers then, they have to claim from the respective management which have appointed them. It has further been contended that it is surprising that according to petitioners, they are discharging their services as a teacher right from 2015 without any salary. But none of the teachers have claimed or have taken steps of any nature against the school management with a demand to pay the salary and as such, this circumstance itself is sufficient enough to indicate that there is a collusion between the management and the petitioners - teachers and as such, in such a situation when it is apparent that the State Government cannot be saddled with liability in any form, the grant has rightly been stopped to the institute. If any claim remotely available to the petitioners, it should be against the school management and not against the Government at all. It is further the contention of learned AGP that writ of mandamus can be issued provided there is an infringement of any legal right. Here in the instant case, the facts are such wherein there is no legal right created of the petitioners in any form since it is based upon a fraud and concoction and as such, this Court may not exercise extraordinary jurisdiction as writ of mandamus is not available to the petitioners. Learned AGP has further submitted that there are seriously disputed questions of fact and misleading averments are contained in the petitions, for e.g., in Para.2.1 in SCA No.10635 of 2016 and by referring to this, it has been submitted that in the background of this disputed questions of fact and the misleading averments, no equitable jurisdiction be exercised. By referring to page-10 of the petition, at the bottom there is over written on the date, which is with a view to see that this advertisement may not be of the same date i.e. of 10th and, therefore, this over written is an intentional and deliberate act on the part of petitioners while producing on record. On the contrary, on account of such conduct, a serious step is required to be taken against the petitioners concerned. However, be that as it may, these are the averments which are not inspiring any confidence. So, this Court may not grant any equitable relief for the petitioners. It has further been submitted that yet another example which is visible from SCA No.432 of 2016, wherein though there is no post of principal which is clearly reflecting from Para.8.1 on page-88, still an attempt is made to project as if the said post is available. However, be that as it may, these are the issues of factual details not to be gone into in the background of this peculiar set of circumstance, since the entire investigation is referred to, pursuant to which criminal case is pending.

Lastly submitting on the constitution of committee, a reference is made to Section 18 of the Gujarat Secondary Education Act in which it has been stated that this statutory provision is empowering the Government to constitute a committee for the functioning of the education board and not for this purpose. On the contrary, this constitution of committee cannot attract the provision of Section 18 of the Gujarat Secondary Education Act. Here is a case in which the respondent State Government is providing the grant to the institute which has got its inbuilt executive power to constitute a committee to inquire into any matter related to the subject of State education and has clarified that this was never a subject matter of scrutiny and as such, since the petitioners have participated voluntarily in the process of such committee, allowed the committee to examine the same at length and then, to raise this dispute or grievance in present proceeding is not legally tenable. Hence, the petitions being meritless, the same are to be dismissed, in the interest of justice.

6.3 The learned Assistant Government Pleader has relied upon the decisions reported in (I) (2013) 9 SCC 363 (Para.25) (II) (2011) 15 SCC 81 (III) (2008) 11 SCC 502 (IV) (2016) 7 SCC 615 (Para.42) and relying upon said decisions, it has been submitted that since due opportunity is already given, there is no need to give individual opportunity as this is a case of mass fraudulent attempts and the authority has examined the entire process as a whole. In this view of the matter, learned AGP after referring to these decisions, has submitted that no interference be made in the larger interest of justice. It has been further submitted that against this further affidavit, when entire situation is clarified, the petitioners have not submitted any counter to this. Hence, in the absence of any equity being created and in the absence of any perversity of any nature in decision-making process, the Court may not exercise extraordinary jurisdiction to consider the relief which has been prayed for. Accordingly, all the petitions may be dismissed in respectful submission of learned AGP. No other submissions have been made.

7. Having heard the learned advocates appearing for the respective parties and having gone through the material on record placed before this Court, one thing clearly reflecting that this is not a case of an individual employee, who by practicing fraud, has secured the appointment and came to be terminated. But here is a case in which a huge scam appears to have been unearthed on account of one confidential letter written by one Chirag Patel on 10.9.2014 and upon executing and undertaking a discreet inquiry, the Education Department has referred the matter to Commissioner of Schools, by observing that the forged documents have been created totaling around 42 appointments have taken place in entire taluka consisting of 6 to 7 schools and corruption to the extent of Rs.7 crores has taken place. It further appears from the record that the committee consisting of 6 officers of highest level have undertaken examination of the material and after extending full- fledged hearing to the respective institutions as well as all the affected teachers, a conclusion is arrived at and thereafter, an order is passed based upon which a consequential action is taken against the

petitioners. The committee has, in turn, found that before recruiting an employee, no NOC was obtained, no procedure of recruitment is undertaken and this entire chapter is handed over to the police authority in which after investigating at length, charge-sheets have been filed against all the accused persons and the case is pending for trial. In this background, the action appears to have been taken against the petitioners. Hence, this is not an individual case of an employee but, it appears to have been a combated act of teachers as well as Mandal to defraud the public exchequer.

8. Before advertizing to the contentions, the conclusion which has been arrived at after scrupulously observing the principles of natural justice is also not possible to be ignored. Hence, the translated version of such conclusion is reproduced hereinafter :

"(6) Findings of the Committee:-

In view of the task assigned to the committee vide order dated 12/1/20016 of the Education Department and on the basis of the basic details, facts, representations, and written statement produced before the committee during the hearing, findings of the committee are as follows.

(6.1) School Managements and concerned employees were heard during the hearing. Written statements have also been submitted by them during the hearing. All the statements mainly appear to be of similar nature. It is mainly stated in their representation that appointment has been given by the School Management after giving advertisement in the newspaper and after conducting the prescribed recruitment process, but 'No Objection Certificate', which is to be obtained from the competent authority before giving such advertisement has not been obtained by the Management. Not only that, but the details regarding the qualifications of the candidates and category of reservation do not appear to have been mentioned in the advertisement given by the Management. In view of that, as the defence taken by the Management is not consistent with the Rules, it is not liable to be admissible to that extent. Moreover, as it does not appear that the recruitment process stipulated by the Gujarat Secondary Education Board on 6/10/2003 has been followed in the recruitment process initiated by the Management and as the recruitment process initiated by them does not appear to be as per rules, the representation that the recruitment made by the Management has been conducted as per rules cannot be accepted.

(6.2) One point of the representation made by the Management is also that the District Education Officer, Sabarkantha has passed orders regularizing the employees recruited by the Management. In view of that, it has been submitted that it is none of the fault on their side. This argument is also not sustainable because orders have been passed by the District Education Officer, Sabarkantha regularizing the concerned employees based on the so called orders of the Government regarding approval for regularization and regarding such so called true orders, as mentioned in the letter dated 12/1/2016 of the Education

Department, no such orders have been passed. Not only that, even endorsements have not been made in such type of orders by the Office of the Commissionerate of Schools. Such fact has been submitted. In the files of the District Education Officer, Sabarkantha relating to the procedure carried out by the District Education Officer, Sabarkantha on the disputed office orders, wherein the orders regularizing the concerned employees and orders for the salary have been passed, original signature (signature in the original copy) of any Government Officer in the endorsement of the Commissioner of Schools or the Education Department of the Government shown in it has not been found, therefore, various police complaints have been lodged in this regard and disciplinary actions as per rules have also been taken against the concerned District Officer and his staff. Moreover, as per the procedure mentioned in point No.5.3, it was clearly provided in the Resolution of Education Department dated: 16/04/2005 that, any irregular appointments shall not be made regular after 01/07/2002. Despite that, it appears, looking to the orders of the employees regularized in this case that, they were appointed by the Management after 2002. Therefore, they are not liable to be regularized in any circumstances as per rules. Further, it has been clarified by the Education Department that, they have not passed disputed orders. Not only this but, as those disputed orders were prepared by forgery, this matter is sub-judice. Under such circumstances, all the ancillary procedure carried out pursuant to the fabricated disputed orders which create a large scale financial burden on the Government Treasury, is liable to be cancelled ab-initio. Because, as the decision, of the District Education Officer made on the xerox copy of the fabricated order without having signature in the original copy and without instruction/order of the competent authority in respect of the recruitment of the teachers made by the institution, is clearly illegal, unauthorized and without following the prevailing legal provisions, it is liable to be cancelled ab-initio. Therefore, in respect of such illegal order of District Office, there is no financial liability of the Government and the payment can not be made. In such circumstances, the representations made by the managements and its employees are not liable to be admissible.

6.3) If such recruitment process had been conducted as per rules, temporary approval and thereafter permanent approval would have been given by the District Education Officer. Therefore, no question of regularizing aforesaid recruitment has arisen. Moreover, no such procedure has been conducted by the Management. By stating that, fabricated false documents were prepared by the School Management or by other beneficiary and proposals of regularizing were made to the District Office, and the orders of regularizing the employees were passed on the basis of the false and fabricated approval orders of the Government, the District Office passed the orders absorbing the said employees under direct salary scheme and the employees were paid the salary through the bank under direct salary scheme from the date of appointment. As the disputed office orders of district office are prima-facie found to be passed without approval of the competent authority and as they attract the police/disciplinary action, such

illegal orders creating burden on the Government Treasury are not liable to be paid in any circumstances in the interest of public administration.

(6.4) In connection with the recruitment in the grant-in-aid schools of the state, instructions were issued to all the DEOs vide this office' letter no. S.S.N./P.A./263 dated 26/02/10 that they should not issue NOC to any institution for the recruitment; if NOC is issued, but recruitment process has not started, in such case, the recruitment process should be stopped. If recruitment process is over, the same should not be approved without sanction of Commissioner of the Schools and recruitment process will be conducted in accordance with the policy stipulated by the Government. Despite that, School Management conducted illegal recruitment process and gave appointments after these instructions were issued, which is illegal and contrary to the rules. In this regard, disciplinary actions have been initiated against the concerned persons of District Education Office, Sabarkantha as per the rules and police action has been initiated against the beneficiaries, who have obtained financial gain through such illegal orders of District Office. Under these circumstances, employees cannot be eligible to receive any financial gain through disputed orders.

(6.5) It is to be noted that out of the concerned managements, one Matrushi J.P. Shah High School organized by Shri Chorivad Hitvardhak Mandal in its reply clearly admits that it did not conduct any illegal procedure. Not only that, the Mandal recovered salary paid to the appointed employees from the maintenance grant of its institution for 2014-15 and paid the same to the Government after knowing about the dispute. Moreover, this Mandal and its employees have shown willingness to accept any decision to be taken by the Government in this regard.

(6.6) Apart from the institution working at Chorivad, employees of the remaining 4 (four) institutions have stated that they were unaware of orders of District Office, which were issued based on the fake and fabricated resolutions of approval of the Government. Considering the same, it is pertinent to note that the institution and employees of the institution have directly obtained huge benefit based on the fake and fabricated resolutions of approval of the Government. Looking at the same, it is not prima facie possible that institutions / employees were unaware of such fake and fabricated resolutions. It appears that the entire matter was pre-planned and its aim was to obtain financial gain after having been accommodated under Direct Pay Scheme of the Government illegally. Therefore, the Government has separately lodged complaints vide F.I.R. No. 69/14, 40/14 and 138/14 at Khedbrahma, Khoraj and Idar respectively on 15/11/2014 and vide F.I.R. No. 97/14 at Modasa Rural on 16/11/2014 in this regard. The then District Education Officer and staff members involved in this matter have been suspended with immediate effect and departmental inquiry has also been initiated against them. Further, as it appeared that fake and fabricated documents showing approval of the Government, wherein stickers bearing signatures were pasted at the place where officers put their signatures, were used for regularization of concerned employees and based on the same, they

were included in the Direct Pay Scheme. The said documents were seized from the office of District Education Officer, Sabarkantha and handed over to the Khedbrahma Police Station for the investigation. Considering the same, procedure conducted in pursuant to the disputed orders is liable to be cancelled.

(7) Decision taken by the committee consequent to the aforesaid findings:

Thus, it is stated by the concerned managements/employees in their representation that they were regularized on the basis of orders of the district office. As the documents of approval and resolutions of the government read in those district office orders, are found to be fake and fabricated, the orders of district office passed on the basis of the said documents, also prove to be illegal together with all kind of the benefits given thereto. Therefore, as the prayer sought by the managements/employees to continue the benefits as it is on the basis of the orders of the district office, is not tenable legally in any circumstances, therefore, following order is passed by the committee.

ORDER

(7.1) Looking to the show-cause notice served by the District Education Officer to the School Management Trust and concerned employees, written reply submitted during the hearing held in that connection, documents submitted and above mentioned details, it is found that these orders are proved unlawful as procedure has not been done as per rules and regulations for passing orders of appointment/ regularization of all the employees under the impugned order and as approval of competent authority has also not been obtained. Moreover, as they have been getting salary from the government till today in unlawful manner, which is proved to have been causing unauthorized burden on the treasury of the State, decision is taken to stop it with immediate effect. Moreover, decision is taken by the committee in the interest of public administration and financial benefit that hereinafter all the responsibilities shall be upon the institution and the recovery of the benefits obtained illegally by the employees earlier and at present, shall be done from the school management trusts.

(7.2) Though the school management trusts came to know in November - 2014 that the orders of District Education Officer were passed on the basis of concocted and fabricated approval documents of the Government, they did not act in public interest and by not following the procedure done by Shri Chorivad Trust, they had continued the service of the concerned employees knowingly. Therefore, considering the rules and material evidences regarding irregularity committed by them, this committee takes decision to take action against them as per the rules in the interest of public, educational and financial benefit."

9. The Court, after hearing the learned advocates at length, has gone through the material on record and found that for the purpose of recruitment of teachers, specified norms are prescribed by the Government resolution dated 9.10.2003 which is not in dispute. This resolution indicates that certain steps to be taken while recruiting the person. This policy of recruitment of October,2003 was

framed by the State authority only to streamline the transparent recruitment of teachers, since there were serious irregularities which were brought to the notice of the State authority and nepotism was also unearthed. As a result of this, with a view to see that no irregularity can take place, this policy has been framed. The policy has evolved a mechanism how to constitute a staff selection committee; how to publish the advertisement, in what manner the applications are to be invited, upon receiving the application how the selection is to take place and in what manner the merit list is to be prepared. This detailed mechanism has been provided in this policy.

10. First of all, it has been provided in clause (3) that before publishing an advertisement for recruiting the post of teaching and non-teaching staff. As per the Regulation (20), the advertisement is not to be issued by giving box number, the advertisement must commensurate with the grant of NOC, the advertisement is to be published in a widely circulated daily newspaper and further, pursuant to the advertisement, a candidate has to give through RPAD within 10 days an application in his own hand- writing and the said application is to be invited at the address of the school. Clause (3) of the said resolution is indicating that how the selection committee is to act upon it and minimum requirement of 3 candidates is postulated in clause (4) of the said policy and all these applications based upon which the merit list is to be prepared at the level of DEO's office and then, after the said entire process of selection, the relevant material of selected candidate has to be forwarded to the office of DEO and then, the DEO will have to scrutinize the same for granting or not granting the approval which, in turn, is to be forwarded to the office of the managing mandal or principal to be placed on the notice board. So, this entire mechanism is provided way back in 2003 by virtue of policy.

11. A further look at the record indicates that even after this, a further step is taken by the State authority by publishing a notification on 11.2.2011, whereby in addition to the aforesaid having found that rules are necessary, in exercise of power under Section 35 of the Gujarat Secondary and Higher Education Act, 1972 the Rules have been framed for the selection of teachers and head master of 'registered private secondary and higher secondary schools.' These rules are statutory in character and each school, who is recognized by the Government, has to observe in its true spirit. Now, looking at these Rules, the selection of teachers and head masters is to be scrutinized and cleared by validly constituted selection committee which is prescribed in Rule-3 which reads as under :

"3. Constitution of Selection Committee:

(1) There shall be constituted a selection committee known as "The Gujarat State Secondary and Higher Secondary School Educational Staff Recruitment Selection Committee".

(2) The Selection Committee shall consist of the following members, namely;

(i) The Commissioner Mid-day-Meals and School, Gujarat State, Gandhinagar - Chairman Ex-officio

(ii) Vice-Chairman, the Gujarat Secondary and Higher Secondary Education Board, Gandhinagar. -Member, ex-officio

(iii) A senior Government Officer, not below the rank of Deputy Secretary, appointed by the Government. -Member

(iv) Two eminent educationists nominated by the Government -Member

(v) A representative of recognized association of school management, nominated by the Government. -Member

(vi) The Joint Director of Schools, Gujarat State, Gandhinagar -Member

(3) The Joint Director of Schools, Gujarat State, Gandhinagar shall be the Member-Secretary of the Selection Committee."

12. This validly constituted selection committee had to select the persons for appointment, who are found to be qualified and deserved to be appointed in accordance with the provisions these Rules. Rules 9, 10 and 11 are the rules relating to application for the post of teacher or head master, scrutiny of applications and preparation of select list. Rule 12 of these Rules indicates that the manner in which the selection committee has to prepare the select list in 3 parts. Rule 15 has made it clear that mere inclusion in select list shall not by itself confer on a candidate any right of appointment. So, this entire mechanism of recruitment has been spelt out by this notification which the registered private schools are bound to observe.

13. Apparently, a bare look at the relevant record indicates that these Rules are found to have been given a go-by as found by inquiry committee which is set for this very purpose of examination and it is found that not only the appointment orders are forged but, there was no NOC in a relevant form was available with the institute. It was also categorically found that the approval orders which are stated to have been issued by DEO, Sabarkantha have also not been issued at all which has been clarified in a letter dated 12.1.2016 and on examination, this inquiry committee found that bogus orders have been obtained having no signature on original one and there are resolutions of the Government dated 16.4.2005 as well as 1.7.2002 that such kind of irregular appointments cannot be regularized in any form. It has also been found in detailed examination that on the basis of such fraudulent material in respect of appointments and in respect of approval, these employees have been found covered under the direct payment scheme and through bank, some of the employees have been even paid the salaries.

14. It has also been found that having realized the consequence and having found one of the school mandal Choriwad Hitvardhak Kelavni Mandal administering Matushri J.P.A. Shah Highschool, Choriwad has, in turn, accepted

this position and has, on the contrary, refunded the amount which has been paid for the year 2014-15 of salary to these teachers, who have been appointed like this by allowing the Government to deduct from the maintenance grant and rest of the Mandals appears to have hesitated. This is clearly visible from the material on record.

15. It is also found from the submissions made by learned advocates appearing for both the sides that these petitioners as well as respective office bearers and the person in-charge of the respective educational mandals are arraigned in the criminal case as an accused persons and the charge-sheets have been filed against them, for which the trial is pending. It has also been brought to the notice that a quashing petition is filed before this Court but, only protection about no coercive step is extended, however, the investigation is not stayed. As a result of this, after thorough investigation, it has been stated before the Court that charge-sheets have been filed, having prima facie found material against the accused persons in respect of commission of crime, as alleged. When this be so, how far the submissions which have been made by learned advocate for the petitioners in respect of principles of natural justice, in respect of conducting detailed departmental inquiry are available is the subject matter of controversy before this Court.

16. Initially, the affidavit-in-reply was filed but, later on, a detailed further affidavit is filed on behalf of the State authority, pointing out in detail as to in what manner a gross irregularity and fraud is committed, as alleged. Now, some of the irregularities have been stated at length for giving an example that this is the manner in which the entire recruitment process in connivance has taken place. Since the same is eloquent enough, the Court deems it proper to incorporate. The relevant averments made in further affidavit by the State which have undisputedly not been controverted till date by any of the petitioners, are reproduced hereinafter :

"7.1 SCA No.432 of 2015 - Sunilkumar Punjabhai Patel v/s. State of Gujarat and SCA No.18742 of 2016 - Sarvoday Seva Mandal v/s. State of Gujarat. It is the case of the petitioners of SCA No.432 of 2015 and more particularly petitioner Nos.2 and 3, Smt. Pushpaben Pursottamdas Patel and Shri Kamleshkumar Ishwarbhai Patel, respectively that they were appointed as Shikshan Sahayaks in Sarvoday Vinay Mandir of Sarvoday Seva Mandal, pursuant to the advertisements dated 20.5.2012 and 9.6.2013. So far as the petitioner No.1, i.e. Shri Sunilkumar Punjabhai Patel is concerned, as per his own case, he has applied for the post of Principal pursuant to the so-called advertisement dated 9.6.2013. 7.2 However, in the interview process dated 20.05.2012 and 25.05.2012, which took place for appointing teaching and non-teaching staff in Sarvoday Vinay Mandir of Sarvoday Seva Mandal, Shri Sunilkumar Punjabhai Patel (Petitioner No.1 of SCA No.432 of 2015) though was not appointed as a Principal, was present in the said interview process for taking interview in the capacity of Principal, as one of the Members of the Selection Committee.

Annexed hereto and collectively marked as Annexure-IV (colly.) are the copies of the so-called Circular of Selection / Rojkam dated 20.5.2012 and 25.5.2012 indicating the presence of the Members of the Selection Committee of the Sarvodaya Vinay Mandir of Sarvodaya Seva Mandal. In fact, Shri Sunilkumar Punjabhai Patel was appointed as Principal on 10.6.2013, i.e. almost after a period of one year of the interviews dated 20.05.2012 and 25.05.2012 conducted for appointment of Shikshan Sahayaks. Considering the aforesaid factum, when the petitioner No.1 was appointed as Principal only on 10.06.2013, how could the petitioner No.1 Shri Sunilkumar Punjabhai Patel remained present in the interview process on 20.05.2012 and 25.05.2012 for taking interview of the candidates as one of the members in the capacity of Principal. Annexed hereto and marked as Annexure-V is the copy of the so-called circular of selection / Rojkam dated 10.6.2013 appointing the petitioner as Principal of Sarvodaya Vinay Mandir of Sarvodaya Seva Mandal, Gadha indicating the presence of the Members of the Selection Committee.

8. Similarly, while referring to SCA No. 10635 of 2016 - Satyam Kelavani Mandal v/s. State of Gujarat and SCA No. 4803 of 2016 - Manjulaben Gameti v/s. State of Gujarat, it is stated that Satyam Kelavani Mandal is running the school Saurabh Vidhyalaya and Shree Narayanbhai L. Prajapati is the President of Satyam Kelavani Mandal. Smt. Manjulaben Gameti (Petitioner of SCA No.4803 of 2016) was appointed as Principal in Saurabh Vidyalaya pursuant to the so-called advertisement dated 12.10.2007. Said Smt. Manjulaben Gameti happens to be wife of Shri Narayanbhai L. Prajapati, President of Satyam Kelavani Mandal, i.e. petitioner of SCA No.10635 of 2016 running the school Saurabh Vidyalaya. In other words, the President is appointing his wife in his own school as Principal. This conduct on the part of the petitioner of SCA No.10635 of 2016 smacks of nepotism. If one peruses the address indicated in the advertisement dated 12.10.2007 for submitting application, is "President Shri, Narayanbhai L. Prajapati, Satyam Kelavani Mandal, Khedbrahma b/h Dr. Jani Nursing Home, Narayan Nivas, Jeevan Vima Seva Kendra, Khedbrahma, J.Sabarkantha". If one compares this address mentioned in the advertisement with the address indicated by Smt. Manjulaben Gameti in the petition SCA No. 1862/2015 and SCA No. 4803/2016 filed by her, the address mentioned is "B-2, 64B/H Jani Nursing Hospital, Narayan Nivas, Taluka Khedbrahma, District Sabarkantha" the address is one and the same. The said aspect is self-explanatory.

8.1 Further, as per the case of Smt. Manjulaben P. Gameti, (Petitioner of SCA No.4803 of 2016), she was appointed on 16.11.2007 as Principal in Saurabh Vidyalaya. However, the attendance register for the Principal does not show her attendance (and shows the attendance of Shri P.K. Prajapati as Principal) and so is the position with all the teaching and non-teaching staff members who were allegedly appointed during the years 2008 and 2009. This factum is substantiated from the Panchnama produced along with the additional affidavit dated 4.10.2018 (in SCA No.10635 of 2016). To further substantiate the aforesaid contention, it may be noted that the Saurabh Vidyalaya has conducted

interview for appointing the teaching staff on 10.6.2008 which clearly shows that one Mr. P.K. Prajapati was working as Principal of Saurabh Vidyalaya of the petitioner-Trust i.e. SCA No. 10635/2016. Furthermore, if Mr. P.K. Prajapati was already working as Principal in Saurabh Vidyalaya, then there was no need for appointing Principal, the post which was already occupied. This clearly suggests that the appointment of Smt. Manjulaben Gameti was sham and bogus. Annexed hereto and collectively marked as Annexure-VI (colly.) are the copies of the so-called circular of selection / Rojkam dated 10.6.2008 and 10.6.2009 indicating the presence of the Members of the Selection Committee.

8.2 Smt. Manjulaben Gameti (petitioner of SCA No. 4803 of 2016) has been appointed as the Principal. The said Smt. Manjulaben Gameti has mentioned her age as 40 years in the Writ Petition, being SCA No. 1862 of 2015 filed before this Hon'ble Court at the relevant point of time, while challenging the order passed by the District Education Officer freezing the bank accounts. Considering her age as 40 in the year 2015, in the year 2007 when Smt. Manjulaben Gameti applied for the post of Principal, she would be 32 years of age. If 15 years teaching experience is added in her career, it would mean that Smt. Manjulaben Gameti started teaching students at the age of 17 years. This aspect illustrates the colossal mala fide that has taken place in the recruitment process. Annexed hereto and collectively marked as Annexure-VII (colly.) are copies of the relevant pages of the cause title of SCA No.1862 of 2015.

8.3 Apart from aforesaid illegality, one more aspect would suggest that the petitioner of SCA No.10635 of 2016 i.e. Satyam Kelavani Mandal has not left single opportunity to misuse the authority which it has. Satyam Kelavani Mandal got the permission to start 1st Class of Standard XI on grant-in-aid basis only on 10.07.2013 and 2nd Class on 09.10.2013. However, it appointed teachers for Higher Secondary Schools by issuing advertisement on 25.05.2013 followed by so-called interviews on 02.06.2013. In other words, the appointment process started much before the orders dated 10.07.2013 and 09.08/10.2013 (pages 95 and 97 of SCA No.10635 of 2016) passed by the State Government granting permission to start 1st Class of Standard XI.9. Referring to SCA No.10616 of 2016 - Gundel Trust v/s. State of Gujarat and SCA No. 4814 of 2016 Sudhirkumar M. Trivedi v/s. State of Gujarat, it is stated that it is the case of the petitioner that advertisements were issued on 29.05.2012 and 05.06.2012 followed by interviews on 06.06.2012 and 10.06.2012, respectively. However, the Office of the Commissioner accorded permission to start 1st Class of Standard XI on grant-in-aid basis only on 26.09.2012.

9.1 In view of the permission of starting Standard XI having been granted only on 26.09.2012, Gundel Trust, i.e. the petitioner (SCA No.10616 of 2016), could not have issued advertisements on 29.05.2012 and 05.06.2012, i.e. much prior to the order dated 26.09.2012.

9.2 Referring to the appointment of Shri Sudhirkumar M. Trivedi (Petitioner of SCA No.4814 of 2016) in the institution of Gundel Trust, as per the application

dated 10.11.2012, Shri Sudhirkumar M. Trivedi secured his B.Ed. degree in the year 2012 and immediately thereafter, pursuant to the so-called advertisement dated 05.11.2012, Shri Sudhirkumar M. Trivedi (Petitioner of SCA No.4814 of 2016) was appointed as a Principal of Gundel Trust for Higher Secondary School, disregarding the eligibility requirements of Principal.

10.It is stated that apart from the aforesaid illegalities, the alleged advertisements dated 12.10.2007, 10.06.2008 and 10.06.2009 published in the newspaper at the instance of the Satyam Kelavani Mandal, i.e. SCA No. 10635 of 2016, do not inspire any confidence. Further, the said advertisements were not issued in conformity with the circular dated 9.10.2003 and the instructions dated 26.12.2008. I may deal with some of the said advertisements in brief.

10.1 It is respectfully stated that so far as the so-called advertisement dated 10.06.2008 issued by Satyam Kelavani Mandal (Saurabh Vidyalaya) is concerned, it is pertinent to mention that petitioner Parulben Bhagubhai Patel of SCA No.4810 of 2016, has mentioned that the Satyam Kelavani Mandal (Saurabh Vidyalaya) had issued the advertisement dated 10.06.2008 for two posts of Assistant Teachers, one Junior Clerk and one Peon for Saurabh Vidyalaya. Whereas, in SCA No.10635 of 2016 filed by the Satyam Kelavani Mandal (Saurabh Vidyalaya), the very same advertisement dated 10.06.2008 has been produced at page 10, Annexure-B, depicting it to be issued on 02.06.2008, by effecting overwriting on the figure '10' to give impression of '2'. I respectfully request this Hon'ble Court in exercise of its extraordinary jurisdiction to initiate the proceedings of perjury as Shree Satyam Kelavani Mandal, the petitioner (SCA No.10635 of 2016) knowing that the said advertisement is not dated 02.06.2008, has intentionally given a false evidence on oath by producing on record the said advertisement in support of its case, projecting it to be an advertisement issued on 02.06.2008 and the corresponding averments in para 2.1 of SCA No.10635 of 2016 are reproduced hereunder for ready reference:

"2.1 The petitioner is running educational institutes, one of them being Shri Saurabh Vidhyalaya at village: Nana Sebaliya Taluka: Khedbrahma District: Sabarkantha i.e. having secondary and higher secondary sections. Petitioner states that petitioner was in need of a principal because of the vacancy in the high school, it issued an advertisement on 12.10.2007 in a reputed Gujarati Daily Newspaper for recruitment of eligible candidates by specifying the provisions applicable and the qualifications required on the post of principal. Copy of the advertisement dated 12.10.2007 is produced herewith and marked as Annexure-A to the petition. Likewise, another advertisement was issued on 02.06.2008 for recruitment of eligible candidates to the post of 2 teachers, 1 junior clerk and 1 peon in the same school. Copy of the advertisement was issued on 02.06.2008 is produced herewith and marked as Annexure-B to the petition. Third advertisement was published in the newspaper on 10.06.2009 for recruitment of 6 teachers. Copy of the advertisement dated 10.06.2009 is produced herewith and marked Annexure-C to the petition. Lastly, the 4th advertisement in a

Gujarati Daily newspaper was issued on 25.05.2013 for recruitment of the eligible candidates to participate in an open interview, that was to be held for selecting 3 teachers in secondary section, 5 teachers in higher secondary section, 1 craft teacher and 1 librarian on 02.06.2013 at 11 o'clock at the school campus of the petitioner. Copy of the advertisement dated 25.05.2013 is produced herewith and marked as Annexure-D to the petition." Annexed hereto and collectively marked as Annexure-VIII (colly.) are the copies of the so-called advertisements dated 10.06.2008 issued by Saurabh Vidyalaya, Satyam Kelavani Mandal vis-à-vis the interpolated advertisement dated 10.06.2008 containing the date '02.06.2008' for the appointment of teaching and non-teaching staff in Saurabh Vidyalaya, Satyam Kelavani Mandal."

17. The aforesaid uncontroverted irregularities which have been pointed out on oath by the Government officials while filing the affidavit, none of the petitioners have disputed this fact neither the concerned employee nor the respective Mandals. Hence, in such a situation, it appears that the committee's finding with respect to the fraud being committed cannot be held to be perverse in any manner. It may be that the committee might not have in clear terms asserted that fraud is committed possibly on account of the reason that trial in criminal case is very much pending. Hence, these findings which have been derived from the material on record after giving due opportunity to the persons concerned, are not possible to be construed as perverse in any form. These averments on further affidavit pointing out irregularities for which even documents are also attached right from page-129 to 138 which is on the record of the case. Hence, this Court found that there appears to be a sufficient justification for taking action against the petitioners.

18. In the light of this relevant record which is reflecting a mass irregularity, the contentions which have been taken by learned advocates appearing for the petitioners in common if to be tested independently, the same apparently generate no confidence.

19. The first contention which has been raised is with regard to the constitution of scrutiny committee. It has been pointed out that the appointment of committee to examine these so called irregularities is not in consonance with Section 18 of the Gujarat Secondary Education Act and since the very constitution of committee is not in accordance with law, its consequential opinion and conclusion is of no consequence. It has been further pointed out that the committee consisting of several officers but part of it, are DEOs of relevant districts and hence, the constitution of committee is irregular and an attempt is made to be judged on their own cause. Resultantly, its every step is to be ignored. It has further been pointed out that committee has travelled beyond the scope of its function which can be seen from the contents of show cause notice and the preface of the report itself. Resultantly, since the petitioners have not been given an adequate opportunity to meet with, such material and the scope which has been undertaken by the committee, the action is in flagrant violation

of principles of natural justice. Apart from this, the committee has also not considered the fact that several documents relevant to the core issue have not been provided which has also adversely affected the right of making effective representation. So, the ultimate conclusion which has been arrived at by the committee is de-hors the proposition of law.

19.1 In this context, a bare perusal of the relevant statutory provision which has been tried to be pressed into service i.e. Section 18 which apparently is not attracted in the present set of circumstance and as such, it cannot be inferred that constitution of committee is not in accordance with the Section 18 of the Act. Section 18 of the Act is meant for examining the Board's administration and not meant for this kind of scrutiny. Hence, the committee could not have been inferred to have constituted as per Section 18 of the Act. Additionally, it appears that this contention has not been raised at all during the course of participation in the adjudicating process of committee and the opportunity which has been given is fully availed of by the petitioners, wherein no such contention is visible. This contention about constitution of committee is impermissible. Apart from this, the entire self-contained code i.e. Secondary Education Act and the Regulations is sufficiently empowering the State authority to control the secondary education and in furtherance of the object of the Act, if a committee is constituted by the State authority then, such action cannot be said to be illegal in any manner. When the State authority is providing grant to the institute and the step of controlling educational affairs of the State is within the domain of the State, this contention is ill-founded in the mouth of the petitioners since they are the beneficiaries of such kind of orders which are tainted apparently. Hence, the contention which has been raised for the constitution of the committee is not germane to law.

20. Here is a case in which the State has executive control over the education being undertaken by the institutions and when large scale of irregularities have been brought to the notice of the State authority, it was thoroughly justified on the part of State authority to constitute a committee to look- after and examine the affairs which have been alleged, more particularly when there is a pervasive control of the State authority on all these educational institutions. Additionally, so far as the contentions which have been raised as regards no power to constitute a committee, the Court is of the clear opinion that it is an inbuilt mechanism of executive power which has been entrusted to the State authority for acting in furtherance of the object and to carry out the process of Statute, the State can always constitute a committee. By virtue of Article 162 of the Constitution of India, the extent of executive power of the State is stipulated and such power of State executive is co-extensive with that of the State Legislature and as a normal proposition, the Court would not exercise its power of judicial review to interfere with such executive power of the State. For the purpose of proper functioning of the State administration and to see that the object of the Statute and its provision may not be frustrated, that is inbuilt power in the State to appoint a committee like this to examine and there is no pleading in the petitions that no

procedure is followed by the State authorities while appointing the committee to scrutinize this mass irregularity and, therefore, in the absence of the pleadings as well as by virtue of this inbuilt entrustment of executive power of the State, the contentions raised by the petitioners are not possible to be accepted. Accordingly, the constitution of the committee is not possible to be called in question, at the instance of the petitioners. Further, the contention with regard to the members of the committee is concerned, it clearly reflects that as far as possible the highest authorities have been deputed to inquire into the affairs of this large scale irregularities and it has been abundantly made it clear that those two officers i.e. DEOs of Sabarkantha and Arvalli districts, against whom the allegations are levelled, are not forming part of this committee and as such, the contention that very same officers are forming part of the committee, is ill-founded. This holding of committee is with the ultimate source of powers lies in the State and it is with the said authority which has been assigned by virtue of a specific decision dated 3.2.2016, six members have been deputed for forming part of the committee and it has been reiterated that those two officers are not only not the members of the committee but, have been proceeded departmentally and actions have been initiated against them. So, the element of prejudice which was apprehended by the petitioners is also not available to agitate.

21. Additionally, the preface of the report is indicating that with which source the committee has been constituted and for what purpose, the scrutiny is assigned to the committee and the best interest of public exchequer for taking steps, a decision to hold inquiry is taken as can be seen from page-35-Z. It is further found from the relevant record that while undertaking such exercise of scrutiny, all the affected institutions have been given a full opportunity to represent, all the affected employees including the petitioners have also been given an opportunity to represent and after considering and granting such opportunity, a specific conclusion has been arrived at and as said earlier, this recruitment is sufficiently tainted with large scale of irregularities and especially when criminal case is very much pending, within its peripheral limits the committee has taken a decision and as such, the contention with regard to the constitution of committee and its conclusion is not accepted and this is more so when such kind of grievances have never been raised throughout the proceedings in which there is a full participation of not only of the present petitioners but, their respective management of institutes, as well. Hence, the Court is not inclined to accept such contention which is otherwise devoid of merit.

22. The Central Administrative Tribunal, Chandigarh in case of Brij Mohan v. Union of India, reported in 1995 (6) SLR 587 has observed in Para.35, 36, 37, 38 and 39 as under :35. Similarly in another recent judgment of the Hon'ble Supreme Court in U.P. Junior Doctors' Action Committee v. B. Sheetal Nandwani, 1992 Supp. (1) SCC 680 : [1992 (2) SLR 94 (SC)], the students' admission to Medical College Post Graduate course was based on a fake order in a non-existent writ petition wherein the Supreme Court held that even if some

candidates have taken the benefit on the basis of a fake order, it does not justify attraction of the application of the rules of natural justice or of affording any opportunity to be heard. It was accordingly held by Hon'ble Supreme Court :

"The first order being non-existent, had to be declared to be a bogus one. The second order made on the basis of the first order has to be set aside as having been made on the basis of misrepresentation. We are alive to the situation that the persons who have taken admission on the basis of the M.B.B.S., results are not before us. The circumstances in which such benefit has been taken by the candidates concerned do not justify attraction of the application of rules of natural justice of being provided an opportunity to be heard.

36. But in fact, these letters of offers of appointment/selection/training etc. are not the outcome of any of the genuine panel of selected persons prepared and kept by the respondent Railway Recruitment Board. The events and facts which have been narrated and disclosed in these proceedings before the Tribunal appear to be the result of some deep rooted manipulation and conspiracy by certain vested individuals who have succeeded to a great extent to introduce the applicants to gain unlawful entry in public employment when in fact they never deserved it nor can they attach any claim to it.

38. The Staff Selection Commission and the appointing authority must, therefore, be held to have acted under a mistake or were induced to make the offer of appointment by fraudulent means though it could not be said with certainty as to who was guilty of fraud. In any event, the appointment would be vitiated. Such appointments would of candidates, who were not eligible to be appointed under the rules. When such appointments are terminated, it would be allowing the applicant to abuse the process of the court if they are granted any relief as a result of which such illegal appointments are restored. Quashing such orders of termination would revive appointments which should never have been made.

39. Furthermore, it is also an accepted principle of law that no court or Tribunal can be taken assistance of with a view to perpetuate an illegality and thereby defeat the ends of justice. The equity is not in favour of any of the applicants before this Tribunal. In a way it has deprived and defeated the claims of eligible and qualified candidates who could have been selected / appointed for the posts advertised for by the respondent Railway Recruitment Board, Jammu-Srinagar. The Tribunal would not be a party to encourage any act or omission which perpetuates a wrong. Before parting, it may be pointed out that even though, the impugned orders relating to the applicants in OA Nos.1214/PB/92 (Jagjit Singh v. Union of India), 1287/PB/92 (Daler Singh v. Union of India), 1559/PB/92 (Angrej Singh v. Union of India) 1193/JK/92 (Jaswant Singh v. Union of India) and 594/PB/93 (Arvind Singh v. Union of India) have been issued as categorizing them for removal under Railway Servants (Discipline and Appeal) Rules, 1968, yet their appointment / selection being based on fake/forged/fabricated selection panel and in the eye of law of having never come into existence, could not be assailed

on the basis that before issuing these orders, the applicants were not afforded any opportunity of being heard, as observed earlier in view of the ratio which has emerged from the judgments of the Hon'ble Supreme Court in the case of U.P. Junior Doctors' Action Committee v. B. Sheetal Nandwani (supra), and Union Territory of Chandigarh v. Dilbagh Singh. Even if the candidates may have a legitimate expectation of being appointed with the respondent Railways on account of their names finding a place in the select list of candidates, they cannot claim to have a right to be heard their names in the selection panels; which are the results of fraud and manipulations are cancelled, for bona fide and valid reasons, and without any element of arbitrariness. In any view of the matter as observed earlier the act of coming into existence of forged panel is a serious matter and appears to be the result of some deep-rooted manipulations and conspiracy by some vested persons through which an unsuccessful attempt has been made to introduce the applicants to gain unlawful entry in public employment in place of rightful candidates, when in fact, they had no claim to it."

23. The Punjab & Haryana High Court in a decision in case of Radhey Shyam v. State of Haryana & Ors., rendered in CWP No.61 of 2015, decided on 6.1.2015, has observed as under :

"Even if the case is considered on merits, in my opinion, the petitioner deserves punishment of dismissal from service. He was a teacher, a role model for the coming generation. In case, he is permitted to indulge in such activities, where for seeking promotion he can be permitted to produce a fake degree and after having got promotion is permitted to plead that leniency be shown to him, the same will send a wrong signal to all concerned. We need to nip the evil in the bud. In such cases, the employee is liable to be granted the maximum punishment so as to serve as a deterrent to all others not to indulge in such activities. Recovery of extra amount drawn by such a person on account of a fake degree produced is also a matter to be examined by the authorities in such cases. What kind of teacher the petitioner had been or could be, can very well be imagined from the fact that he himself was indulging in getting fake degree while in service and teaching the students at elementary level. Educational institutions are temples of learning and a teacher is a kind of priest thereof. The qualifications and character of a teacher are very important. A teacher plays pivotal role in moulding the career, character and moral fibres and aptitude for educational excellence in impressive young children. The teacher is adored as Gurudevobhava, next after parents. He is engine of the education system. He is a principal instrument in awakening the child to cultural values. His qualities should be such as would inspire and motivate into action the benefitter. Reference can be made to the judgment of Hon'ble the Supreme Court in Adarsh Shiksha Mahavidyalaya and others v. Subhash Rahangdale and others, (2012) 2 SCC 425. The petitioner, in fact, had already taken undue advantage of delay in processes on the basis of a fake degree as he was promoted in March, 2000 and continued serving as such till he was dismissed from service."

24. Learned advocates appearing on behalf of the petitioners has further made a submission that on account of non-supply of important documents including the letter dated 12.1.2016, a serious prejudice is caused which has violated the principles of natural justice. But, a bare look at the submissions which were made before the committee which have been recorded, no such grievances appeared to have been made. On the contrary, non-supply of material must reflect the element of prejudice which apparently is not visible from the record. Para.4 onwards has reflected that no such grievance is voiced out and in any case, sufficient notice was put-forth before the petitioners as to what the petitioners are to face during the course of scrutiny of the committee. Several employees of their respective institutes have submitted their detailed explanation. On the contrary, what is emerging is that these petitioners are appearing to be more concern with their respective salary than what they were facing actually in the ground reality. The detailed written explanation is reflecting no element of prejudice being agitated on account of so called non-supply of documents. When that be so, the contention is of no consequence. Further, what has been requested is absolutely general in nature. Since the petitioners are the beneficiaries of tainted recruitment process, whatever opportunity to be made available to them appears to have been given and this is not a case in which an individual departmental inquiry is required to be undertaken, particularly when there are specific allegations of fraud against the petitioners as the petitioners themselves have conveyed. So, in any case, the entire recruitment process has been found to be not at all in consonance with the relevant statutory rules applicable. On the contrary, all individual employees appeared to have submitted their written reply in majority of the institutions as can be seen from the record and each petitioner appears to have been given an opportunity to represent. Hence, the principle of natural justice cannot be stretched to that extent that despite such wholesome irregularity akin to fraud would run as an unruly horse. The Apex Court in several decisions has clearly opined that principle of natural justice cannot be treated as an unruly horse and even after granting an opportunity if the position is not to be altered then, this mere formality of natural justice may not be undertaken. Here is a case in which all these petitioners are the beneficiaries of the recruitment process which has been de-hors the statutory rules and mandate of the policy of the State, the principle of 'audi alteram partem' may not be stretched to that extent, whereby the petitioners be allowed to assail the action on that count alone. Hence, the submissions made by learned advocate appearing for the petitioners, is of no avail to the petitioners.

25. Yet another submission which has been tried to be pressed into service is that since each of the petitioners is affected without holding departmental inquiry against them, no action of termination can take place. But here is a case in which the irregularities which have cropped up in wholesome which can be visualized from the irregularities which have been pointed out by further affidavit of the authority and the fact is also not at all controverted. Hence, when such kind of situation is prevailing on record, there is hardly any justification in accepting the

submission. In fact, the entire recruitment process is based upon the forged and concocted material, not in accordance with the statutory mandate and is based upon large scale nepotism, this Court is not inclined to exercise its extraordinary equitable jurisdiction to allow the petitioners to pitch the case beyond its proportion. Accordingly, the submissions made by learned advocate appearing for the petitioners are not possible to be accepted.

26. The apparent look at the examples which have been narrated supported by the documents attached to the further affidavit from page-127 onwards, this Court is not inclined to encourage such kind of situation to be perpetuated by exercising equitable jurisdiction, when the action is based upon a detailed scrutiny, based upon a validly constituted committee consisting of senior officers and further, the entire investigation is handed over to CID Crime, upon which the charge-sheet is also submitted, without much dwelling into the element of fraud, this Court is of the opinion that the recruitment process is tainted, based upon serious irregularities, the reliefs as prayed for is not possible to be granted.

27. As far as the submissions with regard to the salary part is concerned, it is quite surprising that right from the year 2015 till date, the petitioners are stated to be functioning and performing duties as teachers in the respective institute and are claiming that it is the responsibility of the State Government to nourish the petitioners by paying salary. But the observations in one of the decisions of the Apex Court that salary is a statutory right flowing from a valid recruitment and here is a case in which the recruitment is based upon fraudulent and collusive act of the respective managements and the petitioners as is visible from the record, there is no justification in directing the State authority to pay the salary to these petitioners and very surprising feature which is reflecting from the record is that not on a single occasion, any of the petitioners have even claimed anything by way of salary from their respective management nor even the management has made any attempt. On the contrary, if this salary issue was to be agitated in the spirit in which now tried to be agitated, the petitioners could have taken appropriate step by taking some legal measure. No such step appears to have been taken or claimed from the management. Resultantly, this Court is not suggesting that it is the responsibility of the State to provide salary to these petitioners - teachers, particularly when there appears to be alleged collusive recruitment and the responsibility of such irregular recruitment cannot be thrust upon the Government to bear the burden of salary. If, according to the petitioners, there is a non-compliance of the order passed by this Court in past then, it would be open for the petitioners to take appropriate measure but, having no legal right to claim salary from the State exchequer, this Court is not inclined to accept the request. Since the interim directions are not to be treated as precedent, without opining anything on those directions, the Court is of the view that it would be open for the petitioners to take separate legal steps as and when desire. As said earlier, one school management, on the contrary, has paid back the salary which has been availed from the State by the teachers by allowing the State to deduct the grant available to the institute. Hence, no such

direction to grant the salary is possible to be granted. It is settled position of law that if the appointment orders are found to be tainted or vitiated by fraud then, the same deserves to be recalled and such erroneous appointment orders are not allowed to be perpetuated. On the contrary, no Court should be a party to such perpetuation of fraudulent practice. A mere passage of time of such fraudulent practice would not get sanctity in the Court of law and if any erroneous view is taken on the facts of the present case, it would amount to put in the petitioners and the management at premium on dishonesty and sham practice which, in considered opinion of this Court, cannot be permitted.

27.1 The coordinate bench of this Court in a decision rendered in SCA No.10459 of 2008, decided on 2.8.2008, has observed as under :

6. The Hon'ble Apex Court has in a judgment reported in the case of Bank of India & Anr. v. Avinash D. Mandivikar & Ors., (2005) 7 SCC 690 has clearly observed that in such case the equitable jurisdiction cannot be claimed when the person himself is responsible and having claimed the appointment on the basis of fake certificate. The Hon'ble Apex Court has observed as under:

"The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor would the Court be justified to exercise equity jurisdiction in his favour..... No sympathy and equitable consideration can come to his rescue. Equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud."

28. May be that the authority might not have specifically alleged fraud being practiced by the petitioners but, the Court cannot ignore the fact that these petitioners and the respective managements are arraigned in the criminal prosecution and are accused persons in criminal trial in which the charge-sheets have been filed, finding prima facie the element of crime. In considered opinion of this Court, the fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct and held by one of the decisions of the Apex Court in case of Bahurao Dagdu Paralkar v. State of Maharashtra, reported in 2006 (0) GLHEL-SC 35367 that although in a given case, a deception may not amount to fraud but, the fraud is anathema to all equitable principles and any affair tainted with a fraud cannot be perpetuated or saved by the application of any equitable doctrine including the res-judicata. When this be so, with full emphasis to these

observations, the Court is of the considered opinion that hardly any point is made out by the petitioners which can save the situation in their favour.

29.The judgments which have been relied upon if to be closely perused, the facts in the same are altogether different. But the aforesaid proposition and principle is not at all permitted the Court to accept such irregularities and give any endorsement upon such recruitment process. Hence, this Court is not inclined to exercise equitable jurisdiction in favour of the petitioners. On the issue of continuing such recruitment and regularization the endorsement is not at all available to the petitioners. Simply because the petitioners are working in the respective institutes on their own, there is hardly any justification to grant any equitable relief to the petitioners. The conduct on the part of petitioners in not uttering any grievance against their respective management in respect of claiming salary, such unnatural conduct is also not possible to be ignored. May be that petitioners may not be individually actively participated in such kind of utter irregular recruitment process but, nonetheless, are beneficiaries to such kind of activity and hence, are not in a position to seek any relief as a matter of right.

30.In view of aforesaid set of circumstance and the position, the submissions made by learned advocates appearing for the authorities are sounding confidence. Resultantly, the petitioners have failed in making out the case.

31.In overall consideration of the material on record and in view of the proposition of law laid down by series of decisions which have been pointed out by respective sides, this Court is not inclined to substitute the findings of the scrutiny committee and its report in any manner and the Court would also not like to interfere with such conclusion which has been derived after scrutiny of relevant record and after giving full opportunity to the petitioners concerned. Hence, this being the position prevailing on record, the petitions found to be devoid of merit, the same deserve to be dismissed. In view of the well recognized proposition of law on exercise of extraordinary jurisdiction equitable in nature, the Court inclined not to exercise the extraordinary equitable jurisdiction in view of following observations made by the Apex Court in the decisions and one of such decision is in case of Sameer Suresh Gupta TR PA Holder V/s. Rahul Kumar Agarwal, reported in 2013 (9) SCC 374.

32.In view of the above, the present petitions stand dismissed. Rule is discharged with no order as to costs.

33.Consequently, all connected civil applications do not survive and stand disposed of accordingly.